

Rule 39. Trial**39.01 Generally**

A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.

39.02 Timing**Subdivision 1. Trial.**

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(b) **Trial Following Permanency Progress Review Hearing.** A trial required by Rule 42.04(c) and Minnesota Statutes, section 260C.204, paragraph (d), clause (2) or (3), following a Permanency Progress Review Hearing shall be commenced within sixty (60) days of the filing of a petition for transfer of legal custody or a petition for termination of parental rights, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(c) **Termination of Parental Rights and Other Permanent Placement Matters.** Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) days of the first scheduled admit/deny hearing, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause.

Subd. 3. Effect of Mistrial; Order for New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within thirty (30) days of the order.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

39.03 Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 25;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, sections 260C.503 to 260C.521.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the party that drafted and filed the petition pursuant to Rule 33 may make an opening statement confining the statement to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;

(3) the party that drafted and filed the petition pursuant to Rule 33 shall offer evidence in support of the petition;

(4) the other parties, in order determined by the court, may offer evidence;

(5) the party that drafted and filed the petition pursuant to Rule 33 may offer evidence in rebuttal;

(6) the other parties, in order determined by the court, may offer evidence in rebuttal;

(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

(8) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 33, in order determined by the court, may make a closing statement;

(9) the party that drafted and filed the petition pursuant to Rule 33 may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

(Amended effective July 1, 2014.)

39.04 Standard of Proof

Subdivision 1. Generally. Pursuant to Minnesota Statutes, section 260C.163, subdivision 1, paragraph (a), and the Indian Child Welfare Act, 25 U.S.C. section 1912(e), in a child in need of protection or services matter, the standard of proof is clear and convincing evidence.

Subd. 2. Termination of Parental Rights and Other Permanent Placement Matters.

(a) **Non-Indian Child.** Pursuant to Minnesota Statutes, section 260C.317, subdivision 1, in a termination of parental rights or other permanency matter involving a non-Indian child, the standard of proof is clear and convincing evidence.

(b) **Indian Child.** Pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(f), in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt.

(Amended effective August 1, 2009.)

1999 Advisory Committee Comment

In Re the Matter of M.S.S., 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq., requiring the county to make active efforts to prevent or avoid placement.

39.05 Decision

Subdivision 1. Timing. Within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Sexually Exploited Child Matters. The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds that one or more statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule the matter for further proceedings pursuant to Rule 41. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

Subd. 3. Termination of Parental Rights and Other Permanency Matters.

(a) **Generally.** If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection

or services. If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule further proceedings pursuant to Rule 41. If the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights. If the court finds that any other permanency petition is proved, the court may order relief consistent with that petition and Minnesota Statutes, sections 260C.513 and 260C.515. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

(b) **Particularized Findings.** In addition to making the findings in subdivision 3(a), and Minnesota Statutes, section 260C.517, the court shall also make findings regarding the following as appropriate:

(1) **Non-Indian Child.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided under Minnesota Statutes, section 260.012, paragraph (a).

(2) **Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings regarding the following:

(i) *Active Efforts.* The petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(ii) *Serious Emotional or Physical Damage.* Based upon the testimony, pursuant to Rule 49, of at least one qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(3) **Best Interests of the Child.** Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

- (i) the child's interests in preserving the parent-child relationship;
- (ii) the parent's interests in preserving the parent-child relationship; and
- (iii) any competing interests of the child.

(4) **Best Interests of an Indian Child.** In proceedings involving an Indian child, the best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq.

(5) **Child's Interests Paramount.** Where the interests of parent and child conflict, the interests of the child are paramount.

Subd. 4. Permanent Placement Matters. The court shall issue its decision regarding permanency consistent with Rule 42.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)